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 Oracle USA, Inc., Oracle America, Inc., and
 Oracle International Corp.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation;
 ORACLE AMERICA, INC., a Delaware
 corporation; and ORACLE INTERNATIONAL
 CORPORATION, a California corporation,,

Plaintiff,

vs.

RIMINI STREET, INC., a Nevada corporation;
 AND SETH RAVIN, an individual,,

Defendants.

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Case No. 2:10-cv-0106-LRH-PAL

**PLAINTIFF ORACLE'S RESPONSE
 TO DEFENDANT RIMINI STREET,
 INC.'S AND SETH RAVIN'S
 OBJECTIONS TO EVIDENCE
 SUBMITTED IN SUPPORT OF
 PLAINTIFF'S MOTION FOR
 ATTORNEYS' FEES AND COSTS**

Judge: Hon. Larry R. Hicks

1 Plaintiffs Oracle America, Inc., Oracle USA, Inc., and Oracle International Corporation
 2 (together, “Oracle” or “Plaintiffs”) submit this response to Defendants Rimini Street, Inc., and
 3 Seth Ravin’s (together, “Rimini’s”) objections to evidence submitted in support of Oracle’s
 4 motion for attorneys’ fees and costs.

5 **RIMINI’S EVIDENTIARY OBJECTION NO. 1:**

6 Evidence: Stroz Friedberg Calculations, Including the Division of Taxable and Non-
 7 Taxable Costs (Dkt. 920 1 8; Dkt. 925 [Maroulis Ex. C]; Dkt. 923 1 110; Dkt. 996 at 3:10-13).

8 **ORACLE’S RESPONSE TO EVIDENTIARY OBJECTION NO. 1:**

9 The Stroz calculations have adequate foundation. The entries highlighted in blue in
 10 Exhibit C to the Maroulis Declaration were prepared by Thomas Hixson and individuals under his
 11 direct supervision. Hixson Decl. Ex. F. The highlights were made manually, based on
 12 consultation with Stroz and a determination of the categories of expenses that meet the criteria for
 13 being taxable. Hixson Decl. ¶ 4(b); Dkt. 923 ¶ 110; Dkt. 925 ¶ 8. While there were minor errors
 14 in the initial calculations, these have since been corrected. Hixson Decl. ¶¶ 4-5. The new,
 15 corrected totals are equal to the sum of the individual highlights. Hixson Decl. ¶¶ 4-5.

16 Rimini’s claims about missing invoice pages should also be rejected, because every
 17 invoice had a summary page which described categories of expenses. Stroz has also confirmed
 18 that the summary pages are correct. Essig Decl. ¶¶ 36-37. There was thus adequate foundation
 19 for the \$121,997 out of \$13 million in expenses that related to missing pages. Opp. at 28; Dkt.
 20 1008 ¶ 31.

21 Finally, Rimini’s argument that the Hixson declaration (Dkt. 923) provides inadmissible
 22 expert testimony and improperly attempts to prove the contents of the Stroz invoices should be
 23 rejected. The decisions that Rimini relies on all involve the admissibility of evidence outside of
 24 the context of attorneys’ fees submissions. *Ward v. First Fed. Sav. Bank*, 173 F.3d 611 (7th Cir.
 25 1999) (disregarding a declaration in a Title VII racial discrimination and retaliation case where
 26 the declarant failed to reveal the source of his knowledge); *Smith v. Ceva Logistics U.S., Inc.*,
 27 2011 WL 3204682, at *7-8 (C.D. Cal. July 25, 2011) (discussing the admissibility of testimony of
 28 a *statistician* under Rule 702, not an attorney, despite Rimini’s claims); *York v. Starbucks Corp.*,

2011 WL 8199987, at *15 (C.D. Cal. Nov. 23, 2011) (holding that an attorney’s statements regarding the validity of an expert’s opinion in a wage and hour case were invalid). Although attorneys’ fees are discussed in *Gustafson*, it is an insurance coverage dispute, not an attorneys’ fees submission. 2012 WL 5949572, at *1. In that case, the court held that the plaintiff was unable to testify to the “tasks performed by their attorneys,” but were allowed to “testify about the costs and attorneys’ fees they incurred.” *Id.* at *2-3.

The Hixson declaration (Dkt. 923) is admissible. Courts routinely accept declarations attaching and summarizing invoices from attorneys as adequate evidence of attorneys’ fees and costs. *Yeager v. Bowlin*, 2010 WL 2303273, at *3 (E.D. Cal. June 7, 2010) (finding that amended billing statements prepared by an attorney and paralegal who reviewed the original billing statements were “sufficiently reliable and adequate”), *aff’d*, 495 F. App’x 780 (9th Cir. 2012); *Wells v. New Cherokee Corp.*, 58 F.3d 233, 240 (6th Cir. 1995) (finding that attorneys’ affidavits were “adequate for the district court to make an informed decision”); *see also United States v. City & County of San Francisco*, 748 F.Supp. 1416, 1420 (N.D.Cal. 1990) (noting that the use of “reconstructed records developed by reference to litigation files and other records is an established practice in this circuit”). Mr. Hixson provided a level of detail and supporting evidence that is consistent with numerous fee petitions that have been accepted by courts. Pearl Decl. ¶¶ 130, 19.

Oracle’s support for its Stroz expenses more than meets foundational requirements here.

RIMINI’S EVIDENTIARY OBJECTION NO. 2:

Evidence: Fee Calculations (Dkt. 923 ¶¶ 3-15; Dkt. 924 ¶¶ 3-13; Dkt. 933-1; Dkt. 933-2; Dkt. 971-1; Dkt. 971-2; Dkt. 972-2; Dkt. 996 at 3: 2-5).

ORACLE’S RESPONSE TO EVIDENTIARY OBJECTION NO. 2:

The attorney fee calculations are admissible. The redacted time records were prepared by Thomas Hixson and Kieran Ringgenberg and individuals under their direct supervision. Dkt. 923 ¶¶ 4, 15; Hixson Decl. ¶ 22; Richardson Decl. ¶ 22; Dkt. 924 ¶¶ 2, 4, 45. The total numbers provided (Dkt. 996) were calculated by adding up each of the unredacted time entries, which is the same process that Rimini’s expert used to evaluate the fees. Dkt. 923 ¶ 5; Dkt. 924 ¶ 5; Dkt.

1 1008 ¶ 11.

2 Rimini claims that the attorney fees requested do not add up to the sum of the individual,
3 unredacted time entries, however, the variance is negligible and Rimini's calculations are actually
4 *higher* than Oracle's. *Compare* Dkt. 996, with Dkt. 1008 ¶ 7 (Oracle calculates fees for Morgan
5 Lewis and Boies, Schiller & Flexner at \$31,237,969.67, while Rimini calculates these same fees
6 at \$31,264,891.35). It is thus no surprise that Rimini does not complain about this difference in
7 its Opposition, nor do any of Rimini's declarants state that this difference should be corrected.

8 As described above, there is sufficient foundation for the introduction of this evidence as
9 courts regularly and routinely accept affidavits attaching and summarizing invoices from
10 attorneys as adequate evidence of attorneys' fees and costs.

11 **RIMINI'S EVIDENTIARY OBJECTION NO. 3:**

12 Evidence: "Other Non-Taxable Costs" Calculation. (Dkt. 924 ¶ 42; Dkt. 923 ¶ 101; Dkt.
13 996 at 3:19-20).

14 **ORACLE'S RESPONSE TO EVIDENTIARY OBJECTION NO. 3:**

15 The calculation of the \$1.2 million in other non-taxable costs is admissible. The
16 determination of these costs was conducted by manually identifying and adding up appropriate
17 entries. Hixson Decl. ¶ 3. This process was completed by Thomas Hixson and Kieran
18 Ringgenberg and individuals under their direct supervision. Hixson Decl. ¶ 3. Furthermore,
19 despite what Rimini claims, only one \$7,931.25 expert invoice was double-counted (no cost was
20 triple counted and Oracle has corrected its small error), but this had no effect on its calculation
21 because as Rimini acknowledges, the \$1.2 million in other non-taxable costs do not include
22 expert fees. Hixson Decl. ¶ 4(a); Ex. A.

23 Oracle does not know how Rimini calculated \$1.334 million in non-taxable costs, and that
24 is of no consequence. Oracle calculated it by adding the individual costs listed in Oracle's law
25 firms' invoices, which provided dates and descriptions for each amount. Oracle has reduced its
26 "other" non-taxable costs claim by \$1,409.20 upon re-reviewing its invoices (Hixson Decl. Ex.
27 A), but Oracle stands by its calculations. And there is no harm to Rimini in using Oracle's
28 calculations because Rimini's calculations are once again *higher* than those submitted by Oracle.

1 *Compare* Dkt. 996, with Dkt. 1008 Exs. N-1, N-2 (Oracle calculates other non-taxable costs at
2 \$1,230,273.64, while Rimini calculates these same costs at \$1,334,364.33).

3 The calculation of \$1.2 million in other non-taxable costs has adequate foundation. As
4 described above, there is sufficient foundation for the introduction of this evidence as courts
5 regularly and routinely accept affidavits attaching and summarizing invoices from attorneys as
6 adequate evidence of attorneys' fees and costs.

7 **RIMINI'S EVIDENTIARY OBJECTION NO. 4:**

8 Evidence: Expert Fees Calculation for Elysium and TM Financial Forensics (Dkt. 996 at
9 3:15; Dkt. 924 ¶¶ 44-45; Dkt. 932 ¶ 6; Dkt. 932-1; Dkt. 933 ¶¶ 5, 6; Dkt. 933-1; Dkt. 923 ¶¶ 105).

10 **ORACLE'S RESPONSE TO EVIDENTIARY OBJECTION NO. 4:**

11 Oracle's calculations are admissible. The entries for expert fees were calculated by
12 Thomas Hixson and Kieran Ringgenberg and individuals under their direct supervision. Hixson
13 Decl. ¶ 3; Dkt. 923 ¶¶ 1, 3; Dkt. 924 ¶¶ 2-3. As described above, there is sufficient foundation
14 for the introduction of this evidence as courts regularly and routinely accept affidavits attaching
15 and summarizing invoices from attorneys as adequate evidence of attorneys' fees and costs.

16 Moreover, after reviewing the criticisms of Rimini's expert, Mr. Trunko, Oracle has
17 determined that it inadvertently counted one \$7,391.25 TMF invoice twice in its calculation of
18 TMF costs, and that its Elysium expert costs needed to be reduced by \$815. Hixson Decl. ¶¶ 4(a),
19 4(c). Oracle has corrected these errors, and its updated calculations are accurate. Hixson Decl. ¶¶
20 4-5.

21 **RIMINI'S EVIDENTIARY OBJECTION NO. 5:**

22 Evidence: Attorney testimony that fees and costs incurred are "reasonable" (Dkt. 920
23 ¶¶ 4-5; Dkt. 921 ¶ 4; Dkt. 923 ¶ 15; Dkt. 924 ¶ 12).

24 **ORACLE'S RESPONSE TO EVIDENTIARY OBJECTION NO. 5:**

25 This testimony is admissible. Rimini attempts to characterize the assertions made by
26 Messrs. Maroulis, Hixson, Ringgenberg and Pocker as standalone, conclusory statements.
27 However, the determination that the fees and costs were "reasonable" is based on their extensive
28 familiarity with this case, and their combined years of legal experience. Furthermore, Mr.

1 Maroulis, by virtue of his position as Oracle's in-house counsel, is a consumer of legal services
 2 and is uniquely qualified to determine the reasonableness of the fees. Dkt. 925 ¶ 2. They thus
 3 had adequate experience to support their statements.

4 As described above, there is sufficient foundation for the introduction of this evidence as
 5 courts routinely accept declarations attaching and summarizing invoices from attorneys as
 6 adequate evidence of attorneys' fees and costs. Furthermore, *CLM Partners LLC v. Fiesta Palms,*
 7 *LLC*, 2013 WL 6388760, at *5 (D. Nev. Dec. 5, 2013) explains that a fee applicant should submit
 8 evidence demonstrating the reasonableness of the fees and costs incurred and that this evidence
 9 supporting the reasonableness of requested rates "may include affidavits of the fee applicant's
 10 attorneys." This is supported by established Ninth Circuit authority. *E.g., United Steel Workers*
 11 *of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).¹

12 Dated: April 4, 2016

MORGAN, LEWIS & BOCKIUS LLP

14 By _____

15 Thomas S. Hixson
 16 Attorneys for Plaintiffs
 17 Oracle USA, Inc.
 18 Oracle America, Inc. and
 19 Oracle International Corporation

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 22
 23 ¹ The case law that Rimini cites for the proposition that an attorney cannot testify to the
 24 reasonableness of the fees does not support Rimini's position here. *Forno* did not hold that only
 25 designated experts can testify about "a reasonable fee"; it merely stated that any such testimony
 26 would be "advisory but not binding upon the court." 75 F.2d 692, 696. In *Malbco Holdings,*
 27 *LLC*, the attorney was proffering himself as an expert, which is not the case here. 2010 WL
 28 2572849, at *11. *BP W. Coast Prods., LLC* involves the violation of the Washington Rules of
 Professional Conduct, which are not applicable here. 2013 WL 1694660, at *2. Finally,
Gustafson is not a case evaluating the recovery of attorneys' fees by a prevailing party. 2012 WL
 5949572, at *1 (insurance recovery case). Regardless, Oracle has submitted expert evidence that
 its fees and costs are reasonable. Pearl Decl. ¶¶ 15-19.